No. 588

In the Supreme Court of the United States

OCTOBER TERM, 1941

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ELECTRIC VACUUM CLEANER COMPANY, INC.; INTERNATIONAL MOULDERS' UNION OF NORTH AMERICA, LOCAL 430; PATTERN MAKERS' ASSOCIATION OF CLEVELAND AND VICINITY; INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54; METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3; AND FEDERAL LABOR UNION NO. 18907

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDUM IN BEHALF OF THE NATIONAL LABOR RELATIONS BOARD

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The briefs filed by the Employer and by the Unions, in opposition to our petition for a writ of certiorari, each make certain incorrect statements as to basic facts which we seek to correct by this memorandum.

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1. The Employer (Br. 3, 6) and the Unions (Br. 3) reassert as a fact a version of the oral agreement relating to new employees which the Board and the court below rejected. They say that the parties intended that old employees who were members of the Unions should be required to maintain their membership as a condition of employment. The Board found to the contrary; it found that the oral agreement related solely to new employees, and that the parties did not intend that old employees should be required to remain members of the Unions (R. 161–164).[1] The court below did not set aside this fully substantiated finding of fact; instead it held *as a matter of law*, incorrectly we believe, that old employees were bound to remain members of the Unions, not by force of the oral agreement, but on the wholly different ground that such an obligation arose by legal implication from the union contract and the authorization cards which the employees had signed (R. 871).

2. The Unions (Br. 4) assert that, "At no time did the Company threaten any employee with discharge for refusing to join the American Federation of Labor (R. 524)." This assertion is

[1] In so finding the Board fully considered and explicitly rejected all of the evidence upon which the Employer (Br. 3) and the Unions (Br. 3) rely to sustain their version of the oral agreement (R. 161–164).

contrary to findings of the Board (R. 166–178), concurred in by the court below (R. 869). It ignores, moreover, Ramsey's discharge as well as the other coercive measures taken by the Employer to compel old employees to join the Unions (see Pet. 5–6).

3. The Unions claim that the result below was correct, and the writ should therefore be denied, upon the ground that the closed-shop contracts were protected by the proviso in Section 8 (3) of the Act, despite assistance rendered the Unions prior to the making of the contracts (Br. 9–10). The argument is that the proviso invalidates a closed-shop contract only if the union's *majority* is secured or maintained by means of unfair labor practices. This construction of the proviso runs counter to its plain language, which prohibits an employer from making such a contract with a "labor organization" that has been "assisted by any action defined in this Act as an unfair labor practice."

This contention of the Unions was rejected by the Board (R. 195–196), and was not passed upon by the lower court, although urged by the Unions. If this contention is relevant at all on the question of whether or not the writ should be granted, it

argues in favor of granting the writ in order that the question might be definitively settled.[2]

Respectfully submitted.

CHARLES FAHY,
Acting Solicitor General.

ROBERT B. WATTS,
General Counsel,
National Labor Relations Board.

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[2] In *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, the Machinists union contended that even though the employer's assistance contributed to the obtaining of a majority, a closed-shop contract could not be abrogated in the absence of proof and findings that the employer's assistance served to maintain that majority until the time the contract was made. The Court, in holding that the findings and evidence in that case established a continued absence of free choice (p. 88), at least by implication rejected the argument that the proviso related only to a majority.

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